

MARY ANN SMITH
Deputy Commissioner
SEAN M. ROONEY
Assistant Chief Counsel
VANESSA T. LU (State Bar No. 295217)
Counsel
Department of Business Oversight
320 West 4th Street, Suite 750
Los Angeles, California 90013
Telephone: (213) 576-7632
Facsimile: (213) 576-7181

Attorneys for Complainant

BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
OF THE STATE OF CALIFORNIA

In the Matter of:)	CRD NO.: 147991
)	
THE COMMISSIONER OF BUSINESS)	STATEMENT IN SUPPORT OF ORDER
OVERSIGHT,)	IMPOSING ADMINISTRATIVE PENALTIES
)	PURSUANT TO CORPORATIONS CODE
Complainant,)	SECTION 25252
v.)	
)	
MIRAE ASSET WEALTH MANAGEMENT)	
(USA) INC.,)	
)	
Respondent.)	

Jan Lynn Owen, the Commissioner of Business Oversight (Commissioner), alleges and charges as follows:

I.
Jurisdiction and Venue

1. The Commissioner is authorized to administer and enforce the provisions of the California Corporate Securities Law of 1968 (Corp. Code, § 25000 et seq.) (CSL)¹ and the regulations promulgated thereunder at title 10 of the California Code of Regulations (Cal. Code Regs., tit. 10, § 260.000 et seq.).

¹ Unless otherwise indicated, all further statutory references are to the Corporations Code.

2. The Commissioner brings this action to impose administrative penalties against Respondent Mirae Asset Wealth Management (USA) Inc. (Mirae) pursuant to CSL section 25252, and the rules and regulations promulgated thereunder.

II.

Statement of Facts

3. An investment adviser owes a fiduciary duty to his clients. A licensed investment adviser must comply with various statutes, rules and regulations in order to maintain his license. This fiduciary duty and the statutes, rules and regulations are designed to protect an investment adviser's clients and the investing public.

4. At all relevant times, Mirae was a corporation registered with the State of Delaware and located at 555 South Flower Street, Suite 4410, Los Angeles, California, 90071, and was an Investment Adviser, registered through the Central Registration Depository² (CRD) with the assigned number 147991. On June 22, 2015, the Commissioner issued an investment adviser³ certificate to Mirae.

5. At all relevant times, John Wun Jun Park (Park) was an Investment Adviser Representative, with the assigned CRD number 5160624, and was the Chief Compliance Officer and Vice-President of Asset Allocation of Mirae.

6. At all relevant times, Paul Sangyop Lee (Lee) was an Investment Adviser Representative and Registered Representative of Mirae, with the assigned CRD number 5541067.

7. On or about July 13, 2016, the Commissioner began a regulatory examination of Mirae. The examination revealed Mirae failed to maintain its financial records in violation of Corporations Code section 25241 and violated the following sections of the California Code of Regulations (C.C.R):

² Central Registration Depository (CRD) is a licensing and registration system for the U.S. securities industry and regulators. CRD system contains the registration records, qualification, employment and disclosure histories of active registered individuals. CRD system facilitates the processing and payment of registration-related fees such as form filings, fingerprint submissions, qualification exams and continuing education sessions.

³ The CSL defines an "investment adviser," in relevant part, as "any person who, for compensation, engages in the business of advising others either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as part of a regular business, publishes analyses or reports concerning securities." (Corp. Code, § 25009, subd. (a).)

1 a. C.C.R, title 10, section 260.241.3, subdivision (a)(7), by failing to maintain all
2 written communications received and copies of all written communications sent by Mirae
3 relating to its investment advisory business;

4 b. C.C.R, title 10, section 260.241.3, subdivision (e)(2), by failing to make and
5 keep true, accurate and current “books and records . . . [c]harter documents, minute books
6 and stock certificate books of the investment adviser and of any predecessor, shall be
7 maintained in the principal office of the investment adviser”

8 8. The examination also showed Mirae violated CSL section 25238 and C.C.R, title 10,
9 section 260.238, subdivision (a), by recommending Aequitas Commercial Finance (ACF) as an
10 investment to clients without having reasonable grounds to believe that the recommendations were
11 suitable for their clients’ investment objectives, financial situation, and needs.

12 9. ACF was an investment product issued by Aequitas Commercial Finance LLC
13 (Aequitas). The ACF investment encompassed selling private notes to investors by promising a high-
14 yielding return to raise capital. The ACF purportedly used investor funds to engage in various
15 financial transactions, which included buying other companies’ account receivables. The ACF
16 private notes sold to investors had a fixed maturity date with a specific rate of return.

17 10. The examination confirmed that in December 2015, two clients purchased ACF
18 private notes based on Lee’s recommendation. Lee, acting on Mirae’s behalf, advised clients to buy
19 ACF private notes even though Mirae failed to properly review ACF’s offering materials. The
20 clients lost 100 percent of their investments, for a combined investor loss of \$500,000.00.

21 11. Mirae failed to properly review the ACF due-diligence documentation in its
22 possession – specifically the audit conducted by Deloitte & Touche LLP (Deloitte audit). The
23 Deloitte audit gave a clear indication that investing in ACF was very risky. ACF private notes were
24 not suitable because ACF purchased account receivables from companies that filed bankruptcy,
25 stopped remitted payments for past due accounts, defaulted payments, and had other material
26 adverse effects on ACF’s financial position.

27 12. The examination showed Mirae did not conduct a reasonable inquiry to the investors’
28 investment objectives, financial situations, and needs before its clients lost their entire investments in

1 ACF private notes. Mirae did not require its clients to complete suitability forms or risk tolerance
2 questionnaires before Mirae started providing investment advice.

3 **III.**

4 **The Commissioner is Authorized to Impose Administrative Penalties Against**
5 **Any Investment Adviser for Willful Violations of Any Provisions of the CSL**

6 **A. Failing to Maintain Books and Records is Grounds for Administrative Penalties**
7 **Under Corporations Code section 25252, subdivision (b).**

8 13. Paragraphs 1-12 are hereby realleged and incorporated herein by reference as if set
9 forth in their entirety.

10 14. Corporations Code section 25241 provides in pertinent part:

11 Every . . . investment adviser . . . shall make and keep accounts,
12 correspondence, memorandums, papers, books and other records . . . as the
13 commissioner by rule requires

14 15. C.C.R, title 10, section 260.241.3 requires:

15 (a) Every licensed investment adviser shall make and keep true, accurate
16 and current the following books and records relating to such
17 person's investment advisory business:

18 . . .

19 (7) Originals of all written communications received and copies of all
20 written communications sent by such investment adviser relating to: (i)
21 any recommendation made or proposed to be made and any advice given or
22 proposed to be given, (ii) any receipt, disbursement or delivery of funds or
23 securities, or (iii) the placing or execution of any order to purchase or sell any
24 security . . .

25 . . .

26 (e)(2) Charter documents, minute books and stock certificate books of
27 the investment adviser and of any predecessor, shall be maintained in
28 the principal office of the investment adviser and preserved until at
least three years after termination of the enterprise.

16. During the regulatory examination of Mirae in July 2016, the Commissioner
requested copies of books and records relating to Mirae's investment advisory business, including
originals of all written communications received and copies of all written communications sent by

Mirae relating to any recommendation made or proposed to be made and any advice given or proposed to be given.

17. Mirae failed to maintain accurate books and records concerning client correspondence received and sent by Mirae relating to its investment recommendations made or proposed, and investment advice given or proposed.

18. In the same examination, the Commissioner requested to inspect the charter documents, minute books and stock certificate books of Mirae.

19. Mirae failed to provide and maintain its charter documents, minute books and stock certificate books at Mirae's principal office.

20. Corporations Code section 25252 authorizes the Commissioner to issue an order levying administrative penalties against any investment adviser for willful violations of any provision of the CSL and any rules and regulations promulgated thereunder. Corporations Code section 25252 provides:

The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy administrative penalties as follows:

...

(B) Any broker-dealer or investment adviser that willfully violates any provision of this division to which it is subject, or that willfully violates any rule or order adopted or issued pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

21. By reason of the foregoing, Mirae has willfully violated Corporations Code section sections 25241, C.C.R, title 10, section 260.241.3, subdivision (a)(7), and C.C.R, title 10, section 260.241.3, subdivision (e)(2). Mirae as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the CSL and the rules and regulations thereunder to maintain its investment adviser certificate.

///

///

B. Failing to Promote Fair, Equitable and Ethical Principles by Recommending Unsuitable Investments are Grounds for Administrative Penalties Under Corporations Code section 25252, subdivision (b).

22. Paragraphs 1 through 21 are hereby realleged and incorporated herein by reference as if set forth in their entirety.

23. Corporations Code section 25238 provides, in pertinent part:

No investment adviser licensed under this chapter and no natural person associated with the investment adviser shall engage in investment advisory activities, or attempt to engage in investment advisory activities, in this state in contradiction of such rules as the commissioner may prescribe designed to promote fair, equitable and ethical principles. (Emphasis added.)

24. C.C.R, title 10, section 260.238, subdivision (a) provides that the following activities do not promote fair, equitable and ethical principles:

Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the adviser after reasonable examination of such of the client's records as may be provided to the adviser. (Emphasis added.)

Investor #1 – A.T.

25. On or about October 22, 2015, A.T. signed an investment management agreement with Mirae. On or around November 24, 2015, A.T. signed the Aequitas Subscription Agreement and a courtesy copy of the agreement was sent to Park. On or around December 22, 2015, based on Lee's recommendation through Mirae, A.T. invested \$300,000.00 with Aequitas. A.T. purchased three Aequitas private notes – each note requiring an investment of \$100,000.00 with a 11 percent interest rate and maturity in 48 months. By March 2016, the Aequitas private notes were declared an “unrealized loss” with a market value of zero. A.T. lost \$300,000.00 – 100 percent of his investment.

///

///

27. During the examination, Mirae failed to provide the Commissioner any records showing Park or Mirae made any reasonable inquiry concerning A.T.'s investment objectives, financial situations and needs before Mirae invested A.T.'s \$300,000.00 with Aequitas.

28. Mirae and Lee recommended to A.T. to purchase ACF private notes without reasonable grounds to believe that these investments were suitable for A.T. on the basis of information furnished by the client. Mirae and Lee failed to conduct a reasonable inquiry concerning A.T.'s investment objectives, financial situations and needs.

29. On or about October 23, 2015, N.G. signed an investment management agreement with Mirae. On or around December 3, 2015, N.G. signed the Aequis Subscription Agreement and a courtesy copy of the agreement was sent to Park. On or around December 18, 2015, based on Lee's recommendation through Mirae, N.G. invested \$200,000.00 with Aequis. N.G. purchased two Aequis private notes – each note requiring an investment of \$100,000.00 with a 11 percent interest rate and maturity in 48 months. By March 2016, the Aequis private notes were declared an “unrealized loss” with a market value of zero. N.G. lost \$200,000.00 – 100 percent of her investment.

29. Mirae provided the Commissioner a copy of N.G.'s client suitability & risk tolerance form signed on April 11, 2016. N.G. was a 63-year-old caregiver with the primary objective to "accumulate assets for retirement," she expected a total long-term return of 11 to 15 percent and wanted "a portfolio containing some medium risk investments."

30. Mirae and Lee recommended to N.G. to purchase ACF private notes without reasonable grounds to believe that these investments were suitable for N.G. on the basis of information furnished by the client. Mirae and Lee failed to conduct a reasonable inquiry concerning N.G.'s investment objectives, financial situations and needs.

STATEMENT IN SUPPORT OF ORDER IMPOSING ADMINISTRATIVE PENALTIES

1 31. On or around September 26, 2016, Park submitted Mirae’s due-diligence
2 documentation in the form of an audit conducted on Aequis, which included the consolidated
3 financial statements for Aequis’s 2014 and 2015 fiscal years. The Commissioner was told by Park
4 that Mirae failed to complete a thorough due-diligence process or make a reasonable inquiry into
5 Aequis prior to recommending the ACF private notes to its clients.

6 32. The Deloitte audit disclosed that Aequis had business contracts with a company
7 filing for bankruptcy, and ultimately Aequis and its affiliates were negatively affected by the
8 outstanding receivables owed to them by the company filing for bankruptcy.

9 33. Mirae and Lee did not have a reasonable basis for recommending Aequis private
10 notes to its clients, especially when the Deloitte audit gave a clear indication that investing in
11 Aequis was a risky investment due to ongoing financial issues with their business contracts.

12 34. Corporations Code section 25252 authorizes the Commissioner to issue an order
13 levying administrative penalties against any investment adviser for willful violations of any
14 provision of the CSL and any rules and regulations promulgated thereunder. Corporations Code
15 section 25252 provides:

16 The commissioner may, after appropriate notice and opportunity for
17 hearing, by orders, levy administrative penalties as follows:

18 ...

19 (B) Any broker-dealer or investment adviser that willfully violates any
20 provision of this division to which it is subject, or that willfully
21 violates any rule or order adopted or issued pursuant to this division
22 and to which it is subject, is liable for administrative penalties of not
23 more than five thousand dollars (\$5,000) for the first violation, not
24 more than ten thousand dollars (\$10,000) for the second violation, and
25 not more than fifteen thousand dollars (\$15,000) for each subsequent
26 violation.

27 35. Given the severe investor losses, the high degree of risk, and potential volatility of
28 these investments as disclosed in the Deloitte audit, Mirae did not have a reasonable basis to
recommend to A.T. and N.G. to purchase Aequis private notes. Therefore, pursuant to
Corporations Code section 25252, subdivision (b), the Commissioner seeks administrative penalties
for Mirae’s willful violations of the CSL and the rules and regulations adopted pursuant to it.

1 36. On or around November 29, 2016, the Commissioner notified Mirae of these
2 violations. On December 14 and December 22, 2016, Mirae provided deficient responses to the
3 Commissioner.

4 37. By reason of the foregoing, Mirae has willfully violated Corporations Code section
5 25238 and C.C.R, title 10, section 260.238, subdivision (a). Mirae as a licensee, was obligated to
6 have knowledge of, and to comply with, the provisions of the CSL and the rules and regulations
7 thereunder to maintain its investment adviser certificate.

8 **IV.**
9 **Prayer**

10 WHEREFORE, good cause showing and pursuant to Corporations Code section 25252,
11 subdivision (b), the Commissioner prays for an order imposing administrative penalties in the total
12 amount of \$60,000 for willful violations of Corporations Code section 25241; C.C.R, title 10,
13 section 260.241.3 subdivisions (a)(7) and (e)(2); Corporations Code section 25238; and C.C.R, title
14 10, section 260.238, subdivision (a). Pursuant to Corporations Code section 25252, subdivision (b),
15 the penalties are calculated as follows: for the 5 violations noted during the July 13, 2016
16 examination, \$5,000.00 for the first violation, \$10,000.00 for the second violation, and \$15,000.00
17 for each subsequent violation.

18
19 Dated: March 8, 2018
20 Los Angeles, CA

JAN LYNN OWEN
Commissioner of Business Oversight

21 By _____
22 Vanessa T. Lu
23 Counsel
24 Enforcement Division
25
26
27
28